IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

ST.Rev..No. 38 of 2003()

TA.791/1996 OF THE KERALA AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, ADDL.BENCH I, ERNAKULAM

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REVISION PETITINER/APPELLANT

STATE OF KERALA REPRESENTED BY THE DEPUTY COMMISSIONER OF SALES TAX (LAW), COMMERCIAL TAXES, ERNAKULAM.

BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

RESPONDENT: RESPONDENT

M/S. PULICKAL PHARMA, DISTRIBUTORS, COCHIN-16.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.38 of 2003

Dated, this the 19th day of June, 2007

ORDER

H.L.Dattu, C.J.

The assessment year in question is 1993-94. The commodity which has fallen for consideration and discussion before the assessing authority was the "bandages". According to the assessee, it is a dealer in handloom bandages and therefore the sales effected by them are exempt under Entry 27 of the third Schedule to the Kerala General Sales Tax Act. The claim of the assessee was rejected by the assessing authority by holding that the sales effected by the dealer are medicated bandages and therefore would fall under Entry 80 of the first schedule to the Act and accordingly had quantified the tax liability of the assessee. Aggrieved by the said order the assessee was before the first appellate authority. The first appellate authority had accepted the stand of the assessee and accordingly it held that the sales effected by the assessee is "handloom bandages" and therefore it would fall under Entry 27 of the third schedule to the Act.

2. The State, aggrieved by the said order had carried the matter before the second appellate Tribunal. The Tribunal has concurred with the findings of the first appellate authority.

3. Aggrieved by the orders passed by the Tribunal in T.A.No.791 of 1996 dated 6th January, 2001, the revenue is before us in this revision petition. They have framed the following questions of law for our consideration and decision. They are as under:

> "1. Mere assertions made by the assessee without proving the contents of the commodity to establish their claim, is it fair and

proper on the part of the Appellate Tribunal to determine the item coming under the exempted category and not under entry 80 of the first schedule of the K.G.S.T.Act?

2. When there is a specific entry to classify the item, is not the commodity interpreted to be given a dominating claim raised over the general category or item?"

3. For the earlier assessment year, namely 1992-93, the State had also filed a revision before this Court aggrieved by the order passed by the Tribunal in S.T.Rev.No.291 of 2004. This Court after detailed consideration of the issues involved in the case held that the sales effected by the assessee are "handloom bandages" and therefore entitled for exemption since they would fall under Entry 27 of the third schedule to the Act.

4. The issues raised in this revision petition also is identical with the issues raised and considered by this Court in S.T.Rev.No.291 of 2004.

5. Following the decision rendered in the aforesaid revision petition, the questions of law framed by the revenue require to be answered in favour of the assessee and against the revenue. Ordered accordingly.

H.L.DATTU
CHIEF JUSTICE

K.T.SANKARAN
JUDGE

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